

DOCKET NO. 36185

2008 OCT 17 PM 1:01

**PETITION OF INTRADO, INC. FOR
COMPULSORY ARBITRATION WITH
GTE SOUTHWESTERN
INCORPORATED, D/B/A VERIZON
SOUTHWEST UNDER THE FTA
RELATING TO ESTABLISHMENT OF AN
INTERCONNECTION AGREEMENT**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER NO. 2

**MEMORIALIZING PREHEARING CONFERENCE, REQUESTING BRIEFS ON
THRESHOLD LEGAL ISSUES, AND RESTYLING DOCKET**

On October 8, 2008 at 10:30 a.m. Liz Kayser and Susan Goodson, Arbitrators in this proceeding, conducted a prehearing conference (PHC).

Neither party objected to the assigned Arbitrators. The Arbitrators discussed the procedural schedule and the parties agreed to waive the statutory deadlines for conduct of this proceeding. The parties were instructed to file an agreement to waive or extend the statutory deadlines. The Arbitrators note that the parties filed an Initial Joint Decision Point List. The parties offered up a proposed procedural schedule, however, the Arbitrators instructed the parties that there are threshold legal issues that must be resolved before this matter can proceed so it is premature to establish a procedural schedule. No other procedural issues were discussed. The PHC was not transcribed.

The parties shall file initial briefs on the following threshold legal issues by October 31, 2008 and reply briefs by Nov. 7, 2008:

1. Are "emergency services" "telephone exchange service" or "exchange access" for purposes of §251(c)(2)(A) of the Federal Telecommunications Act of 1996?
2. Can Verizon be compelled to arbitrate an interconnection agreement solely for the exchange of "emergency services" traffic?

3. Assuming Verizon can be compelled to arbitrate an interconnection agreement solely for the exchange of "emergency services" traffic; does such interconnection entitle Intrado to interconnect with Verizon in a different manner than other CLECs?
4. What authority permits this Commission to establish a competitive "emergency services" network for wireline telecommunications customers?
5. What authority permits this Commission to require equal access to competitive "emergency services" providers for wireline telecommunications customers?

The parties shall file their agreement to waive or extend the statutory procedural deadlines no later than October 24, 2008.

The Arbitrators have restyled this docket pursuant to P.U.C. PROC. R. 21.33(b)(1)(A) as indicated above.

SIGNED AT AUSTIN, TEXAS the 17th day of October, 2008.

PUBLIC UTILITY COMMISSION OF TEXAS



LIZ KAYSER
ARBITRATOR



SUSAN GOODSON
ARBITRATOR

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered: November 14, 2008

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and
VERIZON WEST VIRGINIA INC.,

Petition for Arbitration filed pursuant
to §252(b) of 47 U.S.C. and 150 C.S.R.
6.15.5.

ARBITRATION AWARD

PROCEDURE

On March 5, 2008, Intrado Communications, Inc. ("Intrado"), filed a petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon West Virginia Inc. ("Verizon"), pursuant to 47 U.S.C. §252(b).¹

On April 3, 2008, Commission Staff ("Staff") filed a Memorandum stating that the parties reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) to file a joint petition for arbitration if issues remain unresolved at the end of the forty-five day period. Staff also stated that the parties agreed to report weekly to the Commission on the progress of the negotiations.

On April 8, 2008, Intrado and Verizon filed a letter stating that they supported Staff's recommendation to hold this proceeding in abeyance for forty-five days to give the parties the opportunity to participate in monitored negotiations with Staff.

On June 10, 2008, Staff filed its final memorandum recommending dismissal of this matter. Staff stated that it had not been involved in negotiations between Intrado and Verizon and that Intrado had not communicated with Staff since the Commission's April 9, 2008 Order.

¹47 U.S.C. §252(b) provides, in part, that state commissions may arbitrate disputes involving interconnection agreements between certain telecommunications carriers upon petition by one of the parties to the negotiation.

On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that a petition for arbitration was not properly before the Commission.

On June 23, 2008, Intrado filed a Petition to Reconsider requesting that the Commission reinstate the arbitration petition and establish a procedural schedule with a decision deadline of September 12, 2008. Verizon responded on July 3, 2008, in opposition to Intrado's Petition to Reconsider. Staff also argued against reopening the proceeding. See, Staff's July 7, 2008 Response. Intrado disputed the assertions of both Staff and Verizon. See, Intrado's July 25, 2008 Reply.

By Commission Order entered on August 1, 2008, the Commission granted Intrado's petition for reconsideration, appointed Chief Administrative Law Judge Melissa Marland, Esquire, or her designee, as the arbitrator in this matter, tolled the final decision deadline in this matter until September 12, 2008, and established procedural parameters. Among other things, the Commission Order required that the arbitrator issue the arbitration award on or before August 29, 2008. Intrado was ordered to fully answer all unanswered data requests propounded by Verizon within seven (7) days of the receipt of the Commission Order. Any motion requesting that the Commission reject the arbitrator's award under 47 U.S.C. §252(e) was to be filed on or before September 2, 2008.

On August 7, 2008, Intrado and Verizon filed a joint motion in this matter, requesting that the Commission extend the decision due date established in its Order of August 1, 2008. According to the joint motion, Intrado and Verizon have agreed to revise the renegotiation request date to re-set the statutory time frame for an arbitration decision in West Virginia until December 12, 2008. Accordingly, they proposed, inter alia, that hearings be held on September 24, 2008, continuing on September 25 and 26, 2008, if necessary; that briefs be filed on or before October 17, 2008; that the ALJ's proposed arbitration award be issued on or before November 7, 2008; that any exceptions to the arbitration award be filed on or before November 14, 2008; and that the Commission issue its decision on or before December 12, 2008. The parties stated that their proposed schedule would insure that the outstanding disputes would be expeditiously resolved while giving the parties, the Administrative Law Judge and the Commission adequate time to address the unresolved issues.

By Commission Order entered on August 12, 2008, the Joint Motion to Extend the Decision Due Date was granted and the Commission tolled the final decision deadline in this matter until December 12, 2008. The arbitrator was directed to establish a procedure schedule and the parties were directed to contact the arbitrator within ten (10) days of the entry of the Commission's Order and provide any information needed by the arbitrator to facilitate scheduling. The arbitrator was directed to issue the arbitration award on or before November 7, 2008. Intrado was directed to fully answer all unanswered Verizon data requests on or before August 12, 2008, and any motion requesting that the Commission reject the arbitrator's ruling was directed to be filed on or before November 14, 2008.

Also on August 12, 2008, Intrado filed applications for the pro hac vice admission of Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, to practice before the Public Service Commission in this matter. The applications were filed pursuant to Rule 8.0 of the Rules of Admission to the Practice of Law in the State of West Virginia (Rules for Admission) by E. Dandridge McDonald, of the law firm of Steptoe and Johnson PLLC, Intrado's local counsel. The affidavits with respect to each of the three out-of-state attorneys also indicated that Mr. McDonald had forwarded a copy of the three applications together with the required \$250 fee for each application to the West Virginia State Bar.

On August 13, 2008, Intrado filed a letter indicating that it had filed its responses to Verizon's discovery requests on August 12, 2008.

By Procedural Order entered on August 19, 2008, a procedural schedule was established for the processing and resolution of this case. Among other things, this matter was set for hearing to be held on September 24, 2008, at 10:00 a.m., at the Public Service Commission Building, in Charleston, West Virginia, and to continue at the same location and at the same time on September 25 and September 26, 2008, if necessary. A schedule for the filing of the transcript of the hearing, initial briefs and reply briefs was also established. Additionally, the motions for the admission pro hac vice to practice before the Commission for Angela Collins, Esquire, Rebecca Ballesteros, Esquire, and Cherie Kiser, Esquire, were granted.

On September 9, 2008, Verizon filed a motion for leave to file and present panel testimony.

On September 16, 2008, Intrado filed a response which did not object to Verizon's request to file and present panel testimony and stated that, in light of Verizon's request, it also intended to use the panel format for some of its rebuttal testimony.

On September 19, 2008, Intrado and Verizon filed a Joint Motion for a modification of the procedural schedule and for an extension of the Administrative Law Judge's decision due date, as a result of a sudden illness in the family of Verizon's lead trial counsel. The parties had reached an agreement regarding a revised schedule, calling for hearing to be held on October 2, 2008, and extending by one week, each, the dates for filing initial briefs and reply briefs and the dates for the issuance of the ALJ recommendation, the filing of exceptions and the issuance of a Commission decision.

By Commission Order entered on September 22, 2008, the Commission granted the motion to extend the date for the issuance of the ALJ recommendation from November 7, 2008, to November 14, 2008, and the date for the issuance of the Commission decision from December 12, 2008, to December 19, 2008.

By Procedural Order issued on September 22, 2008, the procedural schedule established by the Procedural Order of August 19, 2008, including the hearing date of September 24, 2008, was cancelled. The

revised procedural schedule requested by the parties, including the hearing date of October 2, 2008, was adopted.

On September 30, 2008, Verizon filed a notice of witness substitution, substituting Maureen Napolitano for Kathleen Cerrati on its witness panel.

The hearing set for October 2, 2008, was held as scheduled, with Intrado represented by E. Dandridge McDonald, Cherie R. Kiser and Rebecca Ballesteros, Esqs.; Verizon represented by Joseph J. Starsick and Darrell Townsley, Esqs.; and Commission Staff represented by Staff Attorney C. Terry Owen, Esq. At the beginning of the hearing, the undersigned granted the motion for pro hac vice admission of Mr. Townsley upon the motion of Mr. Starsick. Intrado presented the testimony of three witnesses and introduced six exhibits into evidence, including packets consisting of the testimony and exhibits of its witnesses Thomas Hicks, Carey Spence-Lenss and Cindy Clugy, the disputed issues matrix and draft interconnection agreement, and two cross-examination exhibits. Verizon presented the testimony of three witnesses, Maureen Napolitano, Kathy Buckley and Peter D'Amico and introduced seven exhibits into evidence, including the direct and rebuttal testimony and testimony sponsor detail sheets for its witness panel, a rebuttal exhibit and two cross-examination exhibits. Commission Staff presented no testimony or witnesses, although the Staff Attorney cross-examined some of the witnesses of the other parties. At the conclusion of hearing on October 2, 2008, this matter was submitted for an arbitration award, pursuant to the procedural schedule established in the Order of September 22, 2008.

On October 6, 2008, the transcript of the hearing held on October 2, 2008, was filed, consisting of 224 pages and a reporter's certificate.

On October 24 and 31, 2008, Intrado and Verizon each filed initial and reply briefs in accordance with the established schedule, all of which have been considered by the undersigned in the course of rendering this decision.

On November 10, 2008, the West Virginia Enhanced 9-1-1 Council (Council) filed a letter in this matter, stating that it had been informed of the case and had discussed the case at a recent meeting. It specifically referred to Intrado's request to perform 911 call deliver using what the Council referred to as "line call attribution." The Council expressed concern about the reliability and effectiveness of this method of emergency call delivery. However, the Council also stated that it had no desire or intention to limit competition among the companies or to limit the free market in providing a more efficient or less costly product. It asked that its concerns with that particular method of 911 call delivery be included in the file.

On November 12, 2008, Intrado filed a response to the Council's letter and reiterated its position that it was not asking the Commission to rule that 911 call delivery should use line call attribution.

On November 13, 2008, Verizon filed a response to the Council's letter, reiterating its position in this proceeding regarding line attribute routing.

The Council's letter and Intrado's and Verizon's responses thereto have not been considered in the determination of the arbitration award granted herein.

BACKGROUND

Basic 911/E911 Architecture in West Virginia

Emergency telephone service (911) and enhanced emergency telephone service (E911)² allow a caller to reach emergency services quickly in the event of fires, accidents, floods, etc., by dialing the three-digit emergency number of 9-1-1 to reach a public safety answering point (PSAP), also referred to as a 911 center or emergency services center. In basic 911 service, usually the PSAP receives only the voice call. In E911 service, the PSAP receives the call plus the caller's telephone number through a feature known as ANI (automatic number identification). Additionally, the PSAP receives ALI (automatic location identification), via a special ALI database which gives the PSAP the actual location of the caller, even if the caller cannot communicate or the call is disconnected for some reason. (Verizon Ex. 1.0, pp. 12-14).

Currently, 911/E911 service to PSAPs in West Virginia is provided by the two largest incumbent local exchange carriers (ILECs)³ operating in West Virginia, Verizon and Frontier. Verizon serves the 41 PSAPs in Verizon's 45-county West Virginia service territory and is providing some 911/E911 service in Frontier's territory. (Verizon Ex. 1.0, p. 12; Tr., pp. 159-161).

For Verizon's own end user customers who are trying to reach their PSAP, the 911 call goes from the end office serving Verizon's end user to one of the two selective routers⁴ in the end user's LATA (local access and

²For the purposes of this decision, any general reference to either 911 or E911 service encompasses both types of service.

³An ILEC is the local exchange carrier who provided telephone exchange service to a particular area on February 8, 1996, or its successor. (47 U.S.C. §51(h)).

⁴A selective router is a mated pair of tandem switches which send 911 calls to the appropriate PSAP. Verizon has two selective routers in each LATA, or six throughout its West Virginia service territory. A selective router is basically an end office switch with the added features that allow it to transmit 911 calls to the correct PSAP. Basically, when a 911 call reaches the selective router, the selective router looks up the customer's telephone number and predetermined emergency service number, which tell it which trunk route the call needs to take to get to the proper PSAP. (Tr., pp. 190-191, 215-216; Verizon Ex. 1.0, pp. 12-13).

transport area).⁵ (Verizon Ex. 1.0, Attachment 1). There are three LATAs covering West Virginia, the Charleston LATA, the Clarksburg LATA and the Hagerstown, Maryland LATA. There is also a small Independent Market Area covering part of Mercer and McDowell Counties. (Verizon Cross-Examination Ex. 2). The selective routers in each LATA are not interconnected. (Tr., p. 160).

The principal purpose of TA96 was to open the nation's telecommunications markets to competition. As a result, hundreds, if not thousands, of competitive local exchange carriers (CLECs) are now operating nationwide, including many in West Virginia. The CLECs compete with the ILECs to provide various types of telecommunication services in a given area, including local, long distance and data transmission. In order to provide for the termination of its customers' calls to destinations not served by it, a CLEC enters into interconnection agreements with the different ILECs and CLECs that also serve in a particular geographic area. The interconnection agreements cover all aspects of the exchange of traffic and include the point or points of interconnection (POIs) between the two networks, technical requirements, prices/rates and the rights and obligations of the two parties. (Intrado Initial Brief, pp. 3-4, 6-7; 47 U.S.C. §251).

All CLECS are required by TA96 to provide 911/E911 service to their customers. (Tr., p. 176). Accordingly, the interconnection agreements also cover the handling of the CLEC customers' 911 calls. With respect to 911 calls, the interconnection agreement that the CLECs enter into with Verizon in West Virginia requires that the points of interconnection be the two selective routers in the CLEC's LATA. If the CLEC serves on a statewide or close to statewide basis, it connects at all six of Verizon's selective routers. The CLEC constructs trunks directly to the selective routers from its network. When a 911 call from a CLEC customer reaches Verizon's selective router, the same process occurs as it does for a call from Verizon's own end users. The selective router looks up the caller's number and emergency service number and routes the call to the correct PSAP. (Verizon Ex. 1.0, pp. 14-15; Tr., pp. 168-170).

⁵As a result of the 1982 Modified Final Judgment breaking up AT&T and separating the "Bell Companies" into the Regional Bell Operating Companies (RBOCs), the nation was divided into LATAs. RBOCs (including the West Virginia AT&T affiliate, Verizon, fka Bell Atlantic-West Virginia, fka The Chesapeake and Potomac Telephone Company of West Virginia), could only provide local service within LATAs (intraLATA). As a result of the Telecommunications Act of 1996 (TA96), these companies were allowed to provide long distance or interLATA service (service between two LATAs), if they met certain conditions established in §271 of TA96. Verizon filed a §271 petition with the Commission in 2002 and, in its consultative role pursuant to §271, the Commission concluded that Verizon was in compliance with the 14-point checklist in §271 and submitted its Commission Order and Consultative Report to the FCC. (Case No. 02-0809-T-PC, Commission Order and Consultative Report, January 9, 2003). The FCC granted Verizon's §271 application for Maryland, Washington, D.C., and West Virginia later in 2003. Application by Verizon..., 18 FCC Rcd 5212 (2003)).

At various points in West Virginia, Verizon's network is in close proximity or adjacent to the network of another ILEC and they may need to exchange traffic to allow the completion of 911 calls to the correct PSAPs. Verizon entered into agreements with the other ILECs in West Virginia prior to TA96 for this exchange of traffic, including 911 calls. These agreements are called "meet-point arrangements." Under a meet-point arrangement, Verizon and the other ILEC connect to each other's network at a point where their networks meet or are in close proximity to each other. If any facilities need to be constructed by either carrier to reach the meet-point, each carrier bears the responsibility for the construction of its own facilities. However, those arrangements entail little, if any, construction because the meet-point was chosen specifically for the proximity of the two networks to each other. (Verizon Ex. 1.0, p. 14; Tr., p. 167).

Case Background

Several provisions of TA96 address the interconnection of ILEC and CLEC networks. Section 251 of TA96 provides, in part, as follows:

SEC. 251. [47 U.S.C. 251] INTERCONNECTION.

(a) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.-Each telecommunications carrier has the duty-

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

(b) OBLIGATIONS OF ALL LOCAL EXCHANGE CARRIERS.-Each local exchange carrier has the following duties:

(1) RESALE.-The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) NUMBER PORTABILITY.-The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) DIALING PARITY.-The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) ACCESS TO RIGHTS-OF-WAY.-The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224.

(5) RECIPROCAL COMPENSATION.-The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.-In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

(1) DUTY TO NEGOTIATE.-The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) in subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION.-The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network-

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

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Section 252 of TA96 establishes the process by which state commissions may arbitrate requests for interconnection. Section 252(c) provides as follows:

(c) STANDARDS FOR ARBITRATION.-In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall-

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Section 252(e) provides, in part, as follows:

(e) APPROVAL BY STATE COMMISSION.-

(1) APPROVAL REQUIRED.-Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) GROUNDS FOR REJECTION.-The State commission may only reject-

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-

(I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Finally, Section 253(b) provides as follows:

(b) STATE REGULATORY AUTHORITY.-Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Additionally, Rule 15.3.a. of the Commission's Rules and Regulations for the Government of Telephone Utilities (Telephone Rules) (150 CSR 6) provides that any telecommunications carrier may request interconnection with an ILEC in accordance with Sections 251(b) and 251(c) of TA96.

Intrado Communications has been certificated as a CLEC in West Virginia⁶, although it isn't providing any service in the State at this time. (Intrado Ex. 1, Panel Rebuttal, p. 4; Tr., pp. 16, 21). Prior to providing service, Intrado must enter into interconnection agreements with the necessary carriers and file tariffs containing its rates and charges with the Commission. (Final Order, Case No. 06-1892-T-CN). Currently, Intrado is only attempting to provide competitive 911/E911 services in West Virginia, by which it means that it wants to compete with Verizon to provide service to the PSAPs. Intrado will not be serving end users under this agreement. (Verizon Ex. 1.0, p. 31). In order to provide service, Intrado requested an interconnection agreement with Verizon, pursuant to Section 251(c) of TA96. Ultimately, Intrado and Verizon could not agree on an agreement and Intrado filed the petition that generated this proceeding.

In its petition for arbitration filed on March 5, 2008, Intrado presented 44 issues for arbitration. In its response to the petition, Verizon added 3 additional issues. After further negotiations, Intrado and Verizon resolved all but 17 issues. Those issues were presented to

⁶(Intrado Communications, Inc., Case No. 06-1892-T-CN, Commission Order, Final March 28, 2007).

the Commission in this proceeding in a Disputed Issues Matrix (Matrix) which was received in evidence as Intrado Exhibit 4. An interconnection agreement, containing all of the agreed-upon provisions and designating Intrado's and Verizon's respective proposals for the disputed issues, is also part of Intrado Exhibit 4. The issues in the Matrix are keyed to the specific provisions in the interconnection agreement to which they apply, to the extent possible. However, the Matrix specifically notes that, while the parties tried to list all of the affected provisions of the interconnection agreement with each issue, there may be other provisions which were missed by the parties that are also affected by a particular issue. (Intrado Exhibit 4, Matrix, p. 1).

PRELIMINARY JURISDICTIONAL ISSUE

While not raised directly by Verizon, Verizon referenced on several occasions in its testimony and its initial and reply briefs the issue of whether Intrado Communications is even entitled to an interconnection agreement, or to file a petition for arbitration for an interconnection agreement, regarding only 911/E911 services. It noted that the issue was currently pending before the Federal Communications Commission (FCC)⁷ and several state commissions. Verizon stated that it, essentially, had waived the issue of jurisdiction and had agreed to enter into a negotiated interconnection agreement with Intrado, as it would any other CLEC. (Verizon Ex. 1.0, p. 9; Verizon Initial Brief, p. 4; Verizon Reply Brief, pp. 2-5 & Exhibits A-D).

Obviously, jurisdiction is a matter which can be raised at any time and which can be raised by a commission on its own. A fair reading of the applicable provisions of the Telecommunications Act of 1996 and the FCC's rules promulgated in response to TA96 would indicate that Intrado's right to request interconnection solely for the provision of 911/E911 service pursuant to Section 251(c) may be questionable. Section 251(c)(2)(A) provides that ILECs have an obligation to provide interconnection with a requesting telecommunications carrier for the transmission and routing of telephone exchange service and exchange access. The FCC's supporting rule, 47 CFR §51.305(b) states, as follows:

- (b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

⁷For purposes of this decision, when the undersigned uses the term "Commission" in discussion, she is referring to the Public Service Commission of West Virginia. However, in TA96, the term "Commission" refers to the FCC. State regulatory authorities, including designated arbitrators, are referred to as "state commissions."

Under Intrado's proposal, providing service only to PSAPs, Intrado appears to be seeking solely to originate its interexchange traffic on an ILEC's (Verizon's) network.

However, since the issue is pending before the FCC; because Verizon did essentially waive that issue by entering into interconnection agreement negotiations with Intrado; and because the issue was not squarely presented to the parties in a fashion that would have allowed Intrado to recognize that it needed to file responsive testimony and briefing on the issue for the undersigned, she will not address the issue of Intrado's right to request interconnection or arbitration solely for its proposed 911/E911 service to PSAPs.

DISPUTED ISSUES

As noted previously in this Order, there are seventeen disputed issues still remaining for resolution. The issues has been designated at all points throughout the prepared testimony, in the live testimony at hearing and in the Disputed Issues Matrix using the numbering that those issues had in the original list of over fifty disputed issues. Accordingly, that numbering will be retained in this decision. Therefore, the first issue to be addressed will be designated as Issue No. 3. The specific issues to be addressed in this matter are Issues 3, 4, 6, 9, 12, 13, 14, 15, 34, 35, 36, 46, 47, 49, 52, 53 and 54. Both Intrado and Verizon have acknowledged at numerous points that the determination of Issue No. 3 will impact or be dispositive of several subsequent issues, although they will still require discussion and an award.

ISSUE NO. 3

Where should the points of interconnection be located and what terms and conditions should apply with regard to interconnection and transport of traffic?

In its proposed language, Intrado is demanding that, when Intrado is the E911 service provider for the PSAP, Verizon be required to construct facilities from Verizon's network to Intrado's two selective routers on Intrado's network, so that Verizon end users who are served by an Intrado PSAP can reach that PSAP when dialing 911. (Intrado Ex. 1, Hicks Direct, pp. 9-10; Tr. pp. 15-16, 22, 57). At this point, Intrado has not designated specific locations for its selective routers in West Virginia, although it represented that there would be a minimum of two selective routers located in West Virginia. (Intrado Ex. 1, Hicks Direct, p. 14; Tr. pp. 16-18). Intrado also indicated that, if it were more convenient, for Verizon or any other ILEC or CLEC who needed to transport 911 calls to an Intrado-served PSAP, any of Intrado's selective routers located outside the state could also be used, noting that it had at least two selective routers in Ohio, Pennsylvania and Virginia already in service. (Tr. pp. 23, 106, 109-110).

Intrado argues that Verizon should be required to transport 911/E911 calls to Intrado's selective routers where Intrado serves the PSAP, just as Verizon requires all CLECs to transport E911 traffic to Verizon's

selective routers for delivery to Verizon-served PSAPs. Intrado argues that the provision of 911/E911 service to a PSAP is sufficiently different from "plain old telephone service" or POTS, which is the usual subject of an interconnection agreement, that the Commission should feel free to go outside of traditional determinations on interconnection agreements. (Intrado Ex. 1, Hicks Direct, pp. 9-10, and Panel Rebuttal, p. 11; Intrado Ex. 2, Spence-Lenss Direct, pp. 11-12; Intrado Initial Brief, pp. 10-15, and Reply Brief, pp. 4-8). Intrado also argues that its proposal is supported by Section 251(c)(2)(C), which requires the ILEC to provide interconnection to the requesting telecommunications carrier that is at least "equal in quality" to that provided by the local exchange carrier to itself, any subsidiary, affiliate or any other party to which the ILEC provides interconnection. Intrado also argues that the fact that Section 251(c)(2)(B) specifically requires that the point of interconnection be at any technically feasible point on the ILEC's network cannot be used to eviscerate the subsequent subsection. (Intrado Ex. 1, Hicks Direct, p. 14 and Panel Rebuttal, pp. 6-7; Intrado Initial Brief, pp. 8-11; Intrado Reply Brief, pp. 4-5).

Verizon argues that Intrado's request and position are in violation of Section 251(c) of TA96 and pointed out that, in Section 251(c), which delineates additional obligations of incumbent local exchange carriers, ILECs, such as Verizon, are obligated to provide interconnection "at any technically feasible point within the carrier's network." The FCC's supporting rules are even more specific and state that the point of interconnection is to be provided at any technically feasible point within the incumbent LEC network. (See, 47 CFR §51.305(a)(2)). Verizon argues that the fact that CLECs have entered into interconnection agreements with it, which require them to transport 911 calls to Verizon's selective routers when Verizon is serving the PSAP to which those calls are destined, does not constitute a valid reason to require Verizon to transport its end users' 911 calls to Intrado's routers and interconnect on Intrado's network when Intrado serves the PSAP. Verizon argues that the statute and the law are clear; that what Intrado is requesting is simply not permitted; and that Verizon has no obligation to transport 911/E911 calls from Verizon's existing network to Intrado's network. (Verizon Initial Brief and Reply Brief generally).

Verizon also argues that Intrado's proposal potentially would require Verizon to transport calls across LATA boundaries from Verizon's network to a POI on Intrado's network and that Verizon has no such obligation. According to Verizon, for 911/E911 calls originated by Verizon end users to Intrado-serviced PSAPs, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon end user originates the call. For 911/E911 calls transferred between PSAPs served by the two Parties, Intrado must interconnect with Verizon at a POI on Verizon's network in the LATA where the Verizon-served PSAP, from which or to which the call is being transferred, is located. (Verizon Initial and Reply Briefs generally).

Arbitration Award

A great deal of time and effort was devoted by the parties to this issue in their prepared testimony, their live testimony and their initial and reply briefs. In fact, this issue is quite simple to decide. The

law is clear and unequivocal. Section 251(c) of the Telecommunications Act of 1996 obligates an incumbent local exchange carrier, such as Verizon, to provide, for the facilities and the equipment of any requesting telecommunications carrier, interconnection with the ILEC's network, at any technically feasible point within the ILEC's network. (See, 47 U.S.C §251(c)(2)(B); 47 CFR §51.305(A)(2)). Intrado's arguments are ludicrous on their face. On the one hand, Intrado argues that Verizon cannot use one obligation under Section 251(c) to "obliterate" another obligation under Section 251(c). That is certainly true enough. However, Intrado's own argument would require exactly that outcome.

Further, Intrado's argument that Section 251(c)(2)(C) requires Verizon to interconnect at a POI on Intrado's network, because otherwise it is not providing interconnection that is at least equal in quality to that which it provides itself, is simply unsupported by law or reason. First, as pointed out above, Section 251(c)(2)(B) is quite specific. Second, the FCC has already defined what the "equal in quality" subsection means, at 47 CFR §51.305(a)(3). That rule states the following with respect to the "equal in quality" provision: "At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network." The subsection on which Intrado has hung so much of its argument doesn't even apply to the location of the point of interconnection. It simply means that the technical standards which apply at that point of interconnection must be equal in quality to those technical standards which the ILEC applies to itself throughout its network and to other carriers it has allowed to interconnect on its network.

Intrado also argued that, for the purpose of providing competitive 911/E911 services, the Commission must look beyond the traditional interconnection arrangements used for POTS and seek to establish a physical architecture that addresses the special needs of 911 callers and first responders. Intrado argues that 911/E911 services are unique and different and that the physical architecture it is seeking in this issue is critical to issues of reliability, redundancy and minimizing points of failure for 911/E911 services.

However, Intrado's argument on this point must fail for at least two reasons. First, Section 251 makes no distinction between interconnection for POTS and interconnection for more specialized services. The same requirements and rules apply to all types of interconnection. If the provision of 911/E911 service on a competitive basis is a local exchange service, the same statutory language applies to interconnections to provide that service as for any other telecommunications exchange service. Second, and perhaps more importantly, even if there were a different standard, there is absolutely no evidence in the record of this proceeding to demonstrate that the current 911/E911 system architecture and provision of 911/E911 service in West Virginia are in any way deficient, flawed, substandard or even mediocre. (Verizon Ex. 2.0, pp. 3-4; Tr. pp. 152-153).

Intrado also argued that the provisions of Section 253(b) of TA96 provide the Commission with the requisite authority to modify the way interconnection is provided for 911/E911 services, because that Section

provides that, "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis, ... requirements necessary to ... protect the public safety and welfare" However, State regulatory authorities are still required to comply with all provisions of the Telecommunications Act of 1996. (Intrado Initial Brief, p. 19). Section 253(b) does not speak in any way to interconnection requirements between an ILEC and a CLEC. It is simply irrelevant to an interconnection determination.

In its argument on this issue, Intrado relied, in part, upon the arbitration award issued by the Public Utilities Commission of Ohio in Case No. 07-1216-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, pursuant to Section 252(b) of the Telecommunications Act of 1996, September 24, 2008 (Ohio Arbitration Award). Intrado correctly pointed out that, for situations when Intrado was the 911 service provider to the PSAP and Embarq was seeking to allow the completion of its customer's emergency service calls to that PSAP, the ILEC, Embarq, would be required to seek interconnection with Intrado and it was appropriate for the point of interconnection to be on Intrado's network. However, in the Ohio proceeding, Intrado and Embarq had actually agreed during voluntary negotiations that Embarq would interconnect at one point on Intrado's network. Intrado had requested in the arbitration that Embarq be required to have multiple points of interconnection on its network and the Ohio Commission specifically refused to approve that request. Importantly, in a subsequent issue in the same Order, the Ohio Commission clarified its ruling on interconnection by holding that Embarq was only responsible for delivering its traffic to an Intrado selective router located within Embarq's service territory. The Ohio Commission noted that its ruling did not preclude the Parties from mutually agreeing to an additional point or points of interconnection at any technically feasible point either inside or outside of Embarq's territory. In part, the Ohio Commission's clarification was based upon its recognition that Embarq was entitled to route its end users' 911 calls to the point of interconnection and engineer its network on its side of the point of interconnection. (Ohio Arbitration Award, pp. 8, 29, 33).

In a subsequent arbitration award involving Intrado and Cincinnati Bell Telephone Company (CBT), the Ohio Commission further refined its holding on these points to only require CBT to interconnect on Intrado's network at a single point of interconnection within CBT's LATA. (See, Case No. 08-537-TP-ARB, In the matter of the Petition of Intrado Communications, Inc., October 8, 2008, pp. 9-10).

In one respect, however, the undersigned disagrees with the result reached by the Public Utilities Commission of Ohio. In the Ohio arbitration award involving Embarq, and in the subsequent arbitration award involving CBT, the Ohio Commission, apparently, recast Intrado's petition for arbitration from a petition requesting arbitration of its Section 251(c) interconnection request to a petition for arbitration regarding interconnection pursuant to Sections 251(a) and 251(c). The major difference between the two is that, under Section 251(c), the ILEC cannot be required to establish a point of interconnection on the CLEC

network, while, under Section 251(a), the carriers are free to enter into agreements without consideration of the requirements under Sections 251(b) and (c). It was that change that allowed the Ohio Commission to require the ILECs, Enbarq and CBT, to establish a point of interconnection on Intrado's network. The Ohio Commission has taken at least two steps back from the original broad statement, first to limit that point of interconnection to a location in the ILEC service territory and second to limit the POI to a specific LATA.

It is the opinion of the undersigned that, if a carrier files a petition for arbitration of its Section 251(c) interconnection request, the state commission is obligated to arbitrate that request as a Section 251(c) interconnection request. The route taken by the Ohio Commission is fraught with the potential for abuse. It is too easy for state commissions to avoid or modify the requirements established by Congress in TA96, and the more specific requirements established by the FCC in its rules and orders, if the state commission can unilaterally pick out different issues which it wishes to arbitrate in a manner different from what would be required under Section 251(c) and simply designate those issues as Section 251(a) issues. Such potential for abuse is untenable. A request for arbitration of a Section 251(c) interconnection request must be arbitrated in toto as a Section 251(c) arbitration request. The parties to that interconnection agreement certainly can include elements in the agreement which do not specifically relate to the Section 251(b) and (c) requirements; however, the inclusion of those elements in the agreement cannot change the overall characterization of the arbitration proceeding.

It should also be noted that the Telephone Rules adopted by the Commission regarding arbitration under Section 252 omit any reference to §251(a). Only §§251(b) and (c) are mentioned. See, Telephone Rule 15.3.a.

Accordingly, the Verizon-proposed language regarding point(s) of interconnection under the Interconnection Agreement, 911 Attachment §§ 1.3, 1.4, 1.5, 1.6.2, 1.7.3, 2.3.1 and Glossary §§ 2.63, 2.64 and 2.67 are adopted, because Intrado must connect at points of interconnection on Verizon's network. Glossary §§ 2.94 and 2.95 will be addressed in Issue 6. Verizon cannot be required to interconnect on Intrado's network, as there is no legal obligation for it to do so.

Further, as was pointed out by Verizon in the Disputed Issues Matrix, the pricing provisions of the 911 Attachment and the Pricing Attachment must reflect that Intrado is responsible for the cost of transporting 911/E911 calls outside of Verizon's network; that Intrado may not bill Verizon for interconnection with the Intrado network or for transport facilities or services; that Intrado must pay Verizon for interconnection with Verizon's network; and that Intrado must pay Verizon for any Verizon-provided facilities or services used to transport 911/E911 calls between a point of interconnection on Verizon's network and Intrado's network.

ISSUE NO. 4

Whether the Parties should implement inter-selective router trunking and what terms and conditions should govern the exchange of 911/E911 calls between the Parties.

In the Disputed Issues Matrix, Intrado describes its position on this issue by saying that the establishment of inter-selective trunking will allow the ANI and ALI associated with an emergency call to remain with that call when it is transferred to the other selective router. It asserts that Verizon performs this type of routing within its own network and with other 911/E911 service providers. Intrado argues that inter-selective router calls should be exchanged by the parties at the POI established for the parties' exchange of other 911/E911 calls. Finally, Intrado argues that each party should be required to maintain appropriate updates and routing translations for 911/E911 services and call transfers. (Intrado Ex. 4, Matrix, p. 3).

Verizon initially described its position on this issue by stating that, on occasion, 911/E911 calls may be directed to the wrong PSAP. This can occur in the case of a wireless caller because of a lack of identification of the caller's exact location. In the case of a misdirected call, the PSAP that initially received the call may wish to transfer the call to the correct PSAP. Where the PSAPs served by Verizon and Intrado have agreed to transfer misdirected calls between them, Verizon is prepared to work with Intrado to establish appropriate arrangements for the transfer of those calls. Verizon argues that Intrado's proposed language specifies particular methods for the transfer of 911 calls between PSAPs, such as inter/911 tandem/selective routing. Intrado's proposed language also specifies particular activities to be undertaken by the parties in support of Intrado's proposed call transfer methodology, such as the requirement of inter-911 tandem/selective router dial plans. (Intrado Ex. 4, Matrix, p. 3).

The Verizon position statement in the Disputed Issues Matrix also stated that Verizon was still reviewing the technical feasibility of Intrado's proposed methods for inter-PSAP transfer of 911/E911 calls; that the methods proposed by Intrado may not be appropriate in all cases; and that a specification of the method of transfer of 911/E911 calls should not be included in the agreement. Verizon also pointed out that Intrado is proposing that Verizon be required to deliver the calls being transferred from a Verizon-served PSAP to an Intrado-served PSAP at a POI on Intrado's network and Verizon is opposing that requirement for the same reasons set out in Issue No. 3. (Intrado Ex. 4, Matrix, pp. 3-4).

Arbitration Award

As a result of the decision on Issue No. 3, the vast majority of the disputes between Intrado and Verizon on this issue have already been resolved or eliminated. What remains for resolution are Section 1.4.4 of the 911 Attachment of the Interconnection Agreement and six definitions in the Glossary attached to the Interconnection Agreement. In point of fact, those disputes do not actually involve the issue originally described at Issue No. 4.

Section 1.4.4 of the 911 Attachment to the Interconnection Agreement consists entirely of Intrado's proposed language and reads as follows:

The Parties will maintain appropriate inter-911 Tandem/Selective Router dial plans to support inter-PSAP transfer and shall notify the other of changes, additions or deletions to their inter-PSAP transfer dial plans.

Verizon does not dispute that dial plans are needed and appropriate. Verizon represented that is willing to provide that information to Intrado, just as it does for other providers. Verizon asserted that Intrado was seeking an excessive level of dial plan detail in the Interconnection Agreement that is not customary, appropriate, or workable. Therefore, Verizon asked that Section 1.4.4 of the 911 Attachment be deleted. (Verizon Initial Brief, pp. 20-21).

Given that both parties agreed that dial plans are needed, it appears that some language modification is all that is necessary to render Section 1.4.4 of the 911 Attachment acceptable. Accordingly, the parties shall incorporate in the Final Interconnection Agreement, in Section 1.4.4, the following language:

The Parties will maintain appropriate dial plans to support inter-PSAP call transfer and shall notify each other of changes, additions or deletions to those dial plans.

The Glossary definitions appear to be equally easy to address. Glossary Section 2.6 provides an Intrado-proposed definition of ANI. On its face, the definition does not appear to be inappropriate; however neither Intrado nor Verizon felt that a definition for ALI was needed. Therefore, the Interconnection Agreement required by this arbitration award shall delete Section 2.6 of the Glossary to be consistent.

Section 2.63 of the Glossary contains a definition of 911/E911 Service Provider. The dispute appears in subsection (a) and is related to the issue resolved in Issue No. 3. The only reason for the last three lines of subsection (a) not being identical to the last three lines of subsection (b) is the dispute in Issue No. 3. Accordingly, neither Party's language will be adopted. The Interconnection Agreement required by this arbitration award shall modify Section 2.63(a) so that the last phrase of that subsection reads as follows: "and provide transmission and routing of 911/E911 calls from Verizon's network to the PSAP(s)."

Section 2.64 of the Glossary, a definition for 911 Tandem/Selective Router, involves disputes over both Intrado's and Verizon's proposed language. Verizon's proposed language more accurately reflects the function of the equipment and Verizon's language shall be used in the Interconnection Agreement required by this arbitration award.

Section 2.67 of the Glossary is a definition of Point of Interconnection. Again, this definition is directly associated with Issue No. 3. Accordingly, Verizon's proposed language is approved.

Sections 2.94 and 2.95 of the Glossary provide definitions for "Verizon 911 Tandem/Selective Router and Verizon 911 Tandem/Selective

Router Interconnection Wire Center." The definition contained in Section 2.94 is completely superfluous since there is already a definition for 911 tandem/selective router. Accordingly, Section 2.94 of the Glossary will be omitted from the Interconnection Agreement required by this arbitration award. Section 2.95 of the Glossary also is unnecessary and shall be deleted from the Interconnection Agreement required by this arbitration award.

ISSUE NO. 6

Whether the forecasting provisions should be reciprocal

Section 1.6 of the 911 Attachment to the Interconnection Agreement addresses trunk forecasting requirements. Section 1.6.1 is not in dispute and requires that Intrado provide Verizon a two-year traffic forecast that complies with Verizon's trunk forecast guidelines, as revised from time to time, as least ninety days before initiating interconnection in a LATA. Section 1.6.2 is entitled "Ongoing Trunk Forecast Requirements." Verizon's proposed language would require Intrado to submit a good faith forecast on the number of trunks it anticipates Verizon will need to provide during the ensuing two-year period for the exchange of traffic between Intrado and Verizon on a semi-annual basis. It also requires Intrado to provide a new or revised traffic forecast when Intrado develops plans or becomes aware of information that will materially affect the Parties' interconnection. Intrado's proposed language makes this forecasting requirement reciprocal and requires Verizon to also file a two-year forecast on the number of trunks it believes it will need on a semi-annual basis. Obviously, at least in part, Intrado's proposed language was based on its position that Verizon should be required to interconnect on Intrado's network when Intrado is providing 911 service to the PSAP. (See, Intrado Exhibit No. 4, Interconnection Agreement, 911 Attachment, p. 103).

Verizon asserts that Intrado's proposal serves no useful purpose and imposes an unnecessary burden on Verizon. Verizon argues that Intrado will be in the best position to forecast the number of trunks necessary for traffic flowing from Verizon to Intrado. Those trunking needs will depend on Intrado's success in the market and Intrado will be able to track the volume of traffic passing through its network to the PSAP. Additionally, any PSAPs which Intrado signs up as customers will have the best knowledge of call volumes from Verizon's serving area to those PSAPs. (Verizon Exhibit 1.0, pp. 46-47).

Verizon also argues that the agreed-upon language in 911 Attachment §1.5.5 should address any legitimate need Intrado has for forecasts from Verizon. Section 1.5.5 of the 911 Attachment provides that, on request, the Parties will meet to review traffic and usage data on trunk groups and determine whether the Parties should establish new trunk groups, augment existing trunk groups or disconnect existing trunks. Verizon believes that this section should provide Intrado with all of the information it will need to assure there is adequate trunking between the Parties' networks. (Verizon Exhibit 2.0, p. 25).

In its Reply Brief, Intrado argues that there are likely to be numerous 911 calls flowing between the Parties' networks because of misdirected cell phone calls. Intrado asserted that it has a legitimate need for trunk forecasts.

Arbitration Award

The Arbitrator finds Verizon's arguments reasonable. The PSAPs themselves are in the best position to assess the number of misdirected calls which they receive. Accordingly, the PSAPs which Intrado signs up as customers for its competitive 911/E911 service should be able to assess, at least as well as Verizon, the amount of misdirected call volume from Verizon that came to them instead of going to PSAPs served by Verizon. Further, if there is ever a point when Intrado believes that it is not receiving adequate traffic and usage data on trunk groups, it can avail itself of the opportunity provided by Section 1.5.5 of the 911 Attachment. Accordingly, the Interconnection Agreement shall contain Verizon's proposed language for Section 1.6.2 of the 911 Attachment.

ISSUE NO. 9

What terms and conditions should govern how the parties will initiate interconnection

Both parties acknowledged that this issue was related to Issues 3 and 12. The bulk of Intrado's language associated with Issue 9 assumes that Verizon will interconnect at 2 points on Intrado's network. Verizon's position is that, because Intrado is required to interconnect with Verizon at a POI on Verizon's network, rather than the other way around, all of Intrado's proposals which assume that Verizon will build out to Intrado's network must be rejected.

Arbitration Award

For all of the reasons set out in Issue No. 3, it is equally appropriate to reject Intrado's arguments and language on Issue 9. It has been determined that Intrado must interconnect with Verizon at a point or points on Verizon's network. Therefore, Intrado's proposed language for 911 Attachment, Section 1.5, must be rejected.

ISSUE NO. 12

HOW THE PARTIES WILL ROUTE 911/E911 CALLS TO EACH OTHER.

In large measure, the elements in dispute under this issue were resolved by the decisions on Issues 3 and 4. The affected sections set forth in the Disputed Issues Matrix are 911 Attachment Sections 1.3, 1.4 and 1.73 and Glossary Sections 2.6, 2.64, 2.94 and 2.95. 911 Attachment Sections 1.3 and 1.4 and all of the designated Glossary sections have already been addressed. The one remaining section designated by the parties under Issue 12 that has not been addressed is Section 1.7.3 of the 911 Attachment, under the Compensation heading. In fact, much of the disputed language in Section 1.7.3 has also already been resolved by the decisions on Issues 3 and 4. The remaining tariff issue in that section

will be deferred to Issues 34 and 35. In fact, Section 1.7.3 of the 911 Attachment is listed again under Issue 35.

This issue originally involved whether or not it was appropriate under the Interconnection Agreement to require Verizon to utilize direct trunks from Verizon's end offices to the point of interconnection selected by Intrado, which, under Intrado's proposal, would be on Intrado's network, rather than on Verizon's. Intrado also sought to prohibit Verizon from using 911 tandem/selective routers to route 911/E911 calls from the end user to the point of interconnection. Originally, Intrado also specifically requested that Verizon be required to implement "line attribute routing." (See, Intrado Exhibit No. 4, Matrix, pp. 6-7).

Intrado's position on line attribute routing has changed fairly significantly since the filing of the Disputed Issues Matrix. In Intrado's filed testimony, line attribute routing was still recommended as a requirement. However, in the Intrado Reply Brief and in the Intrado response to the Council letter filed on November 12, 2008, Intrado has stated explicitly that it is not recommending the use of line attribute routing and only had suggested it as an alternative to direct trunking. With the decision on Issue No. 3, Intrado's proposal under Issue No. 12 no longer makes sense. With the point of interconnection established on Verizon's network, it is not Intrado's business how Verizon routes the 911 and E911 calls made by its end users on its network to its selective routers. Verizon is entitled to engineer its system on its side of the point of interconnection in the manner it deems to be the most efficient and secure.

Arbitration Award

Accordingly, Intrado's proposals for direct trunking, line attribute routing and the elimination of the use of Verizon's selective routers are all rejected, since, with the establishment of the point of interconnection on Verizon's network, those requests by Intrado intrude upon Verizon's right to engineer its own system in the manner that it deems best. The Glossary sections shall be revised as previously set forth under Issue 4. The pricing issue contained in 911 Attachment Section 1.7.3 is deferred to Issue 35.

ISSUE NO. 13

Whether 911 Attachment Section 1.1.1 should include the Intrado Comm proposed sentence describing Verizon's 911 facilities.

The Intrado sentence which is at issue in this matter simply restates with respect to Verizon an identical sentence regarding Intrado in that section. Subsequently, in Section 1.1, at 1.1.2 and 1.1.3, reciprocal information regarding Intrado and Verizon is set forth on other issues. The sentence is benign and there is no reason for it not to be included in Section 1.1.1 of the 911 Attachment.

Arbitration Award

Section 1.1.1 of the 911 Attachment to the Interconnection Agreement, including the Intrado-proposed language, is approved and incorporated in the Interconnection Agreement established through this arbitration award.

ISSUE NO. 14

Whether the agreement should contain provisions with regard to the Parties maintaining ALI steering tables, and, if so, what those provisions should be.

This issue involves Intrado's proposed Section 1.2.1 of the 911 Attachment. Section 1.2 of the 911 Attachment regarding the ALI database provides that, where Intrado is the 911/E911 service provider and manages the ALI database, Verizon and Intrado will establish mutually acceptable arrangements and procedures for inclusion of Verizon end user data in the ALI database. Intrado-proposed Subsection 1.2.1 states, "The parties shall work cooperatively to maintain the necessary ALI steering tables to support display of ALI between the Parties' respective PSAP customers upon transfer of 911/E911 calls."

Verizon objects to this language because it believes that Intrado's language could require Verizon to actually maintain the ALI database, even when it is Intrado's obligation to do so. Intrado, on the other hand, argues that the parties need to work together as co-carriers to support call transfer capabilities and that each party should be required to maintain appropriate updates in routing translations for 911/E911 services and call transfers. (See, Intrado Exhibit No. 4, Matrix, p. 9). Verizon also pointed out that it already had a commercial agreement with Intrado which addressed the creation of steering tables and Verizon argued that, as a result, there is no need to include Intrado's language in the Interconnection Agreement. (See, Verizon Initial Brief, p. 33; Verizon Exhibit No. 2.0, pp. 45-46).

Intrado argues that the ALI database is one of the three integrated components necessary to provide 911/E911 service. It points out that the switching and transmission components of providing emergency telecommunications service would be useless without the ALI function and appropriate routing of 911 calls to the appropriate PSAP could not occur without the processing necessary for the creation of ALI records. (See, Intrado Initial Brief, pp. 36-37; Intrado Exhibit 1, Hick's Direct, pp. 7-8).

Arbitration Award

Intrado's proposed Section 1.2.1 must be rejected. If Intrado is managing the ALI database, Verizon should not be compelled to perform functions which are Intrado's obligation. The Interconnection Agreement already provides that Verizon and Intrado will establish mutually acceptable arrangements and procedures to include Verizon's end user data in the ALI database, and that language should be more than sufficient.

Accordingly, Verizon's version of Section 1.2 is approved and Intrado's proposed language is rejected.

ISSUE NO. 15

Whether certain definitions related to the Parties' provision of 911/E911 service should be included in the interconnection agreement and what definitions should be used.

This issue involves Glossary Sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95, all of which were already revised in Issue No. 4. Accordingly, there is no need to address these definitions.

Arbitration Award

Glossary Sections 2.6, 2.63, 2.64, 2.67, 2.94 and 2.95 shall be revised as previously determined in Issue No. 4.

ISSUE NO. 34

What Verizon will charge Intrado Comm for 911/E911 related services and what Intrado Comm will charge Verizon for 911/E911 related services.

ISSUE NO. 35

Whether all "applicable" tariff provisions shall be incorporated into the agreement, whether tariffed rates shall apply without a reference to the specific tariff, whether tariffed rates may automatically supercede the rates contained in Pricing Attachment, Appendix A, without a reference to the specific tariff, and whether the Verizon proposed language in Pricing Attachment Section 1.5 with regard to "TBD" rates should be included in the agreement.

Issues 34 and 35 will be addressed together, since they both deal with similar issues regarding the pricing language and charges to be included in the Interconnection Agreement.

Issue 34 addresses 911 Attachment Sections 1.3, 1.4 and 1.7 and Pricing Attachment Sections 1.3, 1.5, and Appendix A. Issue 35 addresses General Terms and Conditions Section 1.1, 911 Attachment Sections 1.3, 1.33, 1.36, 1.42 and 1.73 and Pricing Attachment Sections 1.3, 1.5 and Appendix A. In the Disputed Issues Matrix, Intrado states, with respect to Issue 34, that state retail tariffs governing 911/E911 services are not appropriate for Verizon's provision of service to Intrado under the Interconnection Agreement and that any charges to be assessed to Intrado should be developed pursuant to the Section 251/252 process and set forth in the Interconnection Agreement. Likewise, Intrado should have reciprocal rights to charge Verizon "port" or "termination" charges when Verizon interconnects with Intrado's network. With respect to Issue No. 35, Intrado states that tariff charges should not be permitted to trump the charges contained in the Pricing Appendix, unless those tariffs are specifically referenced in the Pricing Appendix. Any new rates to be developed by Verizon for services under the Interconnection Agreement

should be developed as part of the Section 251/252 process with Commission approval. Unspecified tariff terms and conditions deemed by Verizon to be applicable should not be incorporated into the Interconnection Agreement. Only those tariffs specifically referenced in the Interconnection Agreement should be applied to Intrado. (See, Intrado Exhibit No. 4, Matrix, pp. 11-13).

Verizon, on the other hand, states that its proposed 911 Attachment and Pricing Attachment set out the charges that will be billed by it for services provided under the Agreement. Verizon states that Intrado must pay Verizon the appropriate charges for interconnection at the POI on Verizon's network, such as collocation charges, and must pay Verizon for any facilities and services provided by Verizon to carry 911/E911 calls between the POI on Verizon's network and Intrado's network. Transport and termination of 911/E911 calls will be handled on a non-charged bases and Verizon won't bill Intrado any charges for the transport and termination from the POI to the Verizon-served PSAP of 911/E911 calls that are being transferred from an Intrado-served PSAP to a Verizon-served PSAP. The Pricing Attachment provides for the rates for Verizon's services to be as set out in its tariffs and, in the absence of a tariff rate, as set out in Appendix A to the Pricing Attachment. Verizon asserted that the rates set out in Appendix A are its standard rates for the services listed in that Appendix that are offered to other CLECs. Verizon also asserted that Intrado should not be billing Verizon any charges in connection with 911/E911 calls or interconnection or facilities used to carry those calls. Intrado should not bill Verizon any charges for transport and termination of 911/E911 calls from Verizon end users to Intrado-served PSAPs or for the transport and termination of calls transferred from Verizon-served PSAPs to Intrado-served PSAPs. Further, since Intrado is obligated to interconnect at a POI on Verizon's network, there should be no Intrado charges for Intrado-provided facilities that carry 911/E911 calls and no charges for interconnection to Intrado's network.

With respect to Issue 35, Verizon states that it files tariffs for the services it provides. Applying those tariff rates to the services which Verizon will provide to Intrado, and vice-versa, is appropriate because those rates are subject to review and approval by the Public Service Commission in accordance with applicable legal standards. Further, under the Communications Act, Verizon has a duty of nondiscrimination with regard to the pricing of its services and the use of tariff rates helps it fulfill this obligation. Intrado's proposal to limit the tariffs and apply to the services under the Agreement only those tariffs that are specifically cited either in the Agreement or in Appendix A of the Pricing Attachment is unreasonable because it simply is not feasible to identify in advance each of the tariffs, tariff rates and sections that might apply to services offered under the Agreement. Verizon has proposed language at Section 1.5 of the Pricing Attachment to address the question of how "TBD" (to be determined) rates will be replaced with actual rates. It requested that the Commission adopt its proposed language. (See, Intrado Exhibit No. 4, Matrix, pp. 11-13).

With respect to its own proposed rates, Intrado argues that its rates are reasonable and should be included in the Interconnection Agreement and noted that, in the Ohio Arbitration Award, the Ohio

Commission determined that Intrado's proposed port and termination rates were reasonable and not beyond the range of other companies. (See, Intrado Initial Brief, pp. 33-34).

However, as previously noted, in the Ohio Arbitration Award, Embarq and Intrado had actually agreed that Embarq would have a point of interconnection on Intrado's network. Therefore, it was appropriate for there to be charges for Intrado's services to Embarq in that agreement.

Arbitration Award

With respect to Appendix A of the Pricing Attachment, which is listed as an issue under both Issues 34 and 35, the only disputed language involved the last page of Appendix A (page 139 of the Interconnection Agreement), which sets forth Intrado's proposed rates to charge Verizon. Since it has been determined that there will be no Intrado charges to Verizon because of the decision on Point of Interconnection, the last page of Appendix A to the Pricing Attachment shall be deleted.

With respect to the remainder of the disputed provisions, to the extent that they have not already been resolved by decisions in prior issues, Intrado is incorrect in its arguments that tariff rates are an inappropriate guide for the charges to be assessed by Verizon under the Interconnection Agreement. The FCC has certainly not prohibited the use of state tariffs as a pricing mechanism in Interconnection Agreements. However, the FCC has prohibited Verizon's proposed language that would allow subsequent tariff changes to supercede rates or tariffs listed in the Interconnection Agreement. (See, In the Matter of Petition of WorldCom, Inc., (Virginia Arbitration Order), 17 FCC Rcd 27039 (2002) paras. 599-603). The FCC concluded that allowing subsequent tariff changes to supercede rates and tariffs specifically identified in an Interconnection Agreement would undermine the process established in Sections 251 and 252 of TA96 and could allow state commissions to supercede rates arbitrated under TA96. Accordingly, Sections 1.3.5, 1.3.6, 1.4.2, 1.7.2, 1.7.3, 2.3 and 2.4 of the 911 Attachment to the Interconnection Agreement; Sections 1.3 and 1.5 of the Pricing Attachment; and Section 1.1 of General Terms and Conditions shall be modified to reflect that no charges stated in the Agreement will be automatically superceded by subsequent tariff change and to eliminate phrases such as "notwithstanding any other provision of this agreement or a tariff" or "as set out in Verizon's applicable tariffs and to this agreement."

Finally, with respect to Verizon's argument that it is too burdensome to identify in the Agreement the tariffs which might be applicable to the provision of 911/E911 services to Intrado, the Arbitrator concludes that the burden is irrelevant. If Verizon intends to charge Intrado for a particular service, it ought to be able to figure out what tariff contains that charge or service. All tariffs which might generate charges to Intrado must be specifically listed in the Agreement or the Pricing Attachment.

ISSUE NO. 36

Whether Verizon may require Intrado Comm to charge the same rates as, or lower rates than, the Verizon rates for the same services, facilities and arrangements?

This issue involves Section 2 of the Pricing Attachment, at page 108 of the Interconnection Agreement in Intrado Exhibit 4. Verizon's proposed section, entitled "Intrado Comm Prices," provides that the charges that Intrado can bill Verizon for Intrado services shall not exceed the charges for Verizon's comparable services, unless Intrado has demonstrated to Verizon or the Commission or the FCC that its costs to provide those services exceed Verizon's costs.

Verizon argued in support of its language that its rates are subject to review and approval by the Commission and are subject to a presumption of reasonableness. It argues that, if Intrado wants to charge higher rates to Verizon, it should be required to show, based on its costs, that its proposed rates are reasonable. (Intrado Ex. 4, Matrix p. 13). Intrado argues that its rates should not be capped at the rate that Verizon charges for comparable services. (Id.).

Arbitration Award

The FCC has previously addressed this issue. In the Virginia Arbitration Order, the FCC noted that, with the exception of reciprocal compensation, which is not at issue in this arbitration proceeding, the pricing provisions in §252 of TA96 apply only to ILECs. The FCC noted that it had previously ruled that it would be inconsistent with TA96 for a state commission to impose §251(c) obligations on CLECs. (Virginia Arbitration Order, 17 FCC Rcd 27039 (2002), paras. 587-589). In actuality, however, the issue, though decided in favor of Intrado, is moot, because all of Intrado's rates have previously been stricken from the Interconnection Agreement.

ISSUE NO. 46

Should Intrado Comm have the right to have the agreement amended to incorporate provisions permitting it to exchange traffic other than 911/E911 calls?

This issue involves Section 1.5 of the General Terms and Conditions of the Interconnection Agreement. Intrado argues that it should have the right to amend the Agreement to include interconnection arrangements for services other than 911/E911 services, without having to re-litigate all of the provisions of the Agreement. Intrado noted that the FCC has determined that it is bad faith to require competitors to re-arbitrate issues and contract language that already had been arbitrated. (Intrado Ex. 4, Matrix, p. 14). Verizon argues that Intrado is seeking to retain the benefits of any provisions already obtained by it through negotiation or arbitration and then add additional provisions associated with the exchange of traffic other than 911/E911 calls. Verizon argues that this is unfair and inconsistent with the approach contemplated by Congress, i.e., that all of the provisions of the agreement should be subject to negotiation by the parties. Verizon also argued that Intrado's proposal

is inconsistent with 47 C.F.R. §51.809, which prohibits CLECs from being able to "pick and choose" favorable contract terms and conditions. Verizon argued that, if Intrado wants to greatly expand the scope of the agreement, it should terminate the agreement and negotiate an entirely new agreement in which all of the provisions will be at issue and the parties will be able to engage in a fair and balanced negotiation. (Intrado Ex. 4, Matrix, pp. 14-15; Verizon Initial Brief, pp. 41-42).

Arbitration Award

Section 252(i) of TA96 provides that a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under §252, to which it is a party, to any other requesting telecommunications carrier, upon the same terms and conditions as those provided in the agreement. The FCC's supporting rule for that statute, 47 C.F.R §51.809 provides, in part, that an ILEC shall make available to any requesting telecommunications carrier, any agreement in its entirety, to which the ILEC is a party that is approved by a state commission pursuant to §252 of TA96, upon the same rates, terms and conditions as those provided in the agreement.

The Arbitrator concludes that Verizon's position is well-taken and will be incorporated in the Interconnection Agreement. Accordingly, Intrado's proposed language, constituting the last sentence of Section 1.5 of the General Terms and Conditions of the Interconnection Agreement, shall be deleted from the Interconnection Agreement established pursuant to this arbitration award.

ISSUE NO. 47

Should the Verizon proposed term "a caller" be used to identify what entity is dialing 911 or should this term be deleted as proposed by Intrado Comm?

This issue involves Section 1.1.1 of the 911 Attachment to the Interconnection Agreement. The sentence, including Verizon's language, reads as follows, "911/E911 arrangements provide a caller access to the appropriate PSAP by dialing a three-digit universal telephone number, '911'."

Arbitration Award

Since Verizon's language is accurate, there is no legitimate reason to eliminate the phrase "a caller" from the sentence. Verizon's language is adopted.

ISSUE NO. 49

Should the waiver of charges for 911 call transport, 911 call transport facilities, ALI database and MSAG, be qualified as proposed by Intrado Comm by other provisions of the Agreement?

This issue involves Sections 1.7.2 and 1.7.3 of the 911 Attachment to the Interconnection Agreement. Intrado argues that each party's ability to bill the other party should be limited to the requirements in

the Interconnection Agreement and the rates contained in the Pricing Attachment. Verizon argues that the qualification on the waiver of charges proposed by Intrado is not appropriate and shouldn't be adopted. Verizon argues that Intrado's language potentially undercuts the parties' agreement that neither will bill the other for transport of 911/E911 calls. Verizon also noted that, since Intrado should be connecting with Verizon at a POI on Verizon's network, Intrado shouldn't be billing Verizon any charges for interconnection or facilities for transport of 911/E911 calls and should not be billing Verizon charges in connection with the ALI database or the MSAG, but should recover those costs from the applicable government agency as part of the 911 services Intrado provides to the PSAP. (Intrado Ex. 4, Matrix, p. 16). In both sections, Verizon proposes that the substantive provision be prefaced with the phrase, "Notwithstanding any other provision of this Agreement or a Tariff or otherwise," while Intrado would preface the same provisions with the phrase, "Except as otherwise set forth in this Agreement or in Appendix A to the Pricing Attachment."

Arbitration Award

Verizon's language is more accurate and reflective of the parties' intent with respect to the subsequent provisions in the Interconnection Agreement. Accordingly, Verizon's language is adopted, with the deletion of the phrase "or a tariff." Intrado's proposed language is deleted from the interconnection agreement required pursuant to this arbitration award.

ISSUE NO. 52

Should the reservation of rights to bill charges to 911 controlling authorities and PSAPs be qualified as proposed by Intrado Comm by "to the extent permitted under the parties' tariffs and applicable law"?

ISSUE NO. 53

Should 911 Att. Section 2.5 be made reciprocal and qualified as proposed by Intrado Comm?

Issue 52 involves the ability of Verizon to assess charges against a government agency or PSAP which receives its 911/E911 service from Intrado, but which still may utilize some services provided by Verizon. The provision in dispute in Issue 53 would permit Verizon to deliver 911/E911 calls directly to Intrado's PSAP customer, notwithstanding other provisions in the Agreement.

With respect to Issue 52, Intrado argues that Commission-approved tariffs, state and federal statutes and other regulations should govern whether either Verizon or Intrado may impose charges on 911 Controlling Authorities or PSAPs and asserted that the Interconnection Agreement should not be permitted to usurp existing tariffs and applicable laws. Verizon, on the other hand, noted that Section 2.0 of the Interconnection Agreement is a reservation of rights between the parties and Intrado's proposed qualification is not appropriate. Verizon argued that the Agreement should leave the parties free to bill appropriate charges to

the government agencies. Whether a party is able to do so under its tariffs and applicable law is a matter between that party and the government agencies and is outside the scope of the Agreement.

With respect to Issue No. 53, Intrado argued that such direct routing should only be allowed if the government agency has authorized it and that, if Verizon is permitted to deliver 911/E911 calls directly to a PSAP served by Intrado, Intrado should have the ability to deliver 911/E911 calls directly to a PSAP served by Verizon. Verizon stated that Intrado's request for reciprocity in that Section had been made only recently and was still being considered. Verizon objected to the Intrado proposal that the delivery must be authorized by the PSAP. Verizon stated that a party's right to deliver calls directly to a PSAP served by the other party is a matter between that party and the PSAP and is outside the scope of the agreement. (Intrado Ex. 4, Matrix, pp. 16-17).

Arbitration Award

Verizon's position on Issue 52 is appropriate and is adopted. It is inappropriate to attempt to assert or negotiate in this proceeding the rights of entities not parties to the Agreement. If applicable law or Commission-approved tariffs authorize a party to impose charges on PSAPs or 911 controlling authorities, that need not be stated in this Interconnection Agreement, which is, after all, only between Verizon and Intrado. Accordingly, Intrado's qualification to Sections 2.3 and 2.4 of the 911 Attachment is rejected. However, whether a party has a right to deliver calls directly to a PSAP served by the other party is directly relevant to the issues in this arbitration. Section 2.5 will be rejected. If there is a legitimate reason for either Verizon or Intrado to directly route 911 calls to PSAPs served by the other, those reasons and conditions must be clearly spelled out in the Interconnection Agreement.

ISSUE NO. 54

Should Intrado Comm's proposed interconnection rates be adopted?

This issue has already been resolved through several previous issues.

Arbitration Award

Since Intrado will be interconnecting at a POI on Verizon's network, there should be no charges to Verizon from Intrado for interconnection. Accordingly, Intrado's proposed Section 1.3.7 and 1.7.3 in the 911 Attachment and the Intrado rates at Part II of Appendix A to the Pricing Attachment are all deleted from the Interconnection Agreement arising out of this arbitration award.

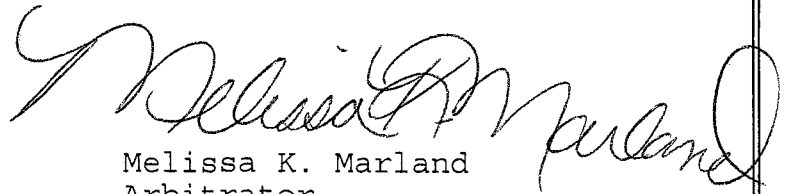
ORDER

IT IS, THEREFORE, ORDERED that Intrado Communications Inc. and Verizon West Virginia Inc. incorporate the directives set forth in this Arbitration Award in their Final Interconnection Agreement.

IT IS FURTHER ORDERED that Intrado and Verizon file the Final Interconnection Agreement resulting from this Arbitration Award with their exceptions to be filed with the Commission on or before November 21, 2008. If Intrado and Verizon are unable to generate a Final Interconnection Agreement to accompany their exceptions to the Commission, each party shall file for Commission review with its exceptions its version of the agreement that should be used in a Commission-approved interconnection agreement.

IT IS FURTHER ORDERED that nothing in this Arbitration Award shall be binding upon the Public Service Commission of West Virginia in any subsequent investigation or proceeding involving any rate, charge, rule or regulation.

IT IS FURTHER ORDERED that a copy of this Arbitration Award be served upon Intrado Communications Inc. and Verizon West Virginia Inc. by United States Certified Mail, return receipt requested, and upon Commission Staff and the Public Service Commission by hand delivery.



Melissa K. Marland
Arbitrator

MKM:mal:bam:cdk
080298ab.wpd

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 16th day of December 2008.

CASE NO. 08-0298-T-PC (REOPENED)

INTRADO COMMUNICATIONS, INC. and
VERIZON WEST VIRGINIA INC.

Petition for Arbitration filed pursuant to §252(b)
of 47 U.S.C. and 150 C.S.R. 6.15.5.

COMMISSION ORDER

The Commission approves the November 21, 2008 Interconnection Agreement.

BACKGROUND

On March 5, 2008, Intrado Communications, Inc., ("Intrado") petitioned for compulsory arbitration of open issues relating to an interconnection agreement with Verizon West Virginia Inc., ("Verizon") under 47 U.S.C. §252(b).

On April 3, 2008, Commission Staff ("Staff") filed a Memorandum stating that the parties had reached an agreement (1) to negotiate for an additional forty-five days, (2) to involve Staff in the negotiations if issues were not resolved by the twenty-third day, and (3) that if issues remain unresolved at the end of the forty-five-day period, to file a joint petition for arbitration. Staff also stated that the parties agreed to report weekly to the Commission on the progress of negotiations.

On June 12, 2008, the Commission dismissed this matter finding that Intrado failed to provide documentation concerning unresolved issues and that an arbitration petition was not properly before the Commission. It also found that the parties failed to file reports on the progress of negotiations. See, Commission Order.

On June 23, 2008, Intrado requested that the Commission reinstate the arbitration petition and establish a procedural schedule. The Commission granted the request, appointed Chief Administrative Law Judge Melissa Marland, or her designee, arbitrator, tolled the deadline in this matter until September 12, 2008, and established procedural parameters. See, August 1, 2008 Commission Order. Thereafter, the Commission extended the final decision deadline to December 19, 2008. See, August 12, 2008, and September 22, 2008 Commission Orders.

The arbitrator held a hearing on October 2, 2008, where both Intrado and Verizon presented witnesses for cross-examination. See, Transcript of October 2, 2008 hearing.

On November 14, 2008, the arbitrator issued her Arbitration Award ("Award") on seventeen unresolved issues. The arbitrator sided with Verizon on key issues including fixing the Point of Interconnection ("POI") on the Verizon network, rejecting the Intrado demand for dedicated trunk lines from each Verizon end office to a POI on its network and rejecting the Intrado proposal to restructure Verizon's network with a new routing system.

On November 21, 2008, Verizon and Intrado jointly filed a text of the Interconnection Agreement ("Agreement") reflecting the decisions in the Award.

Intrado separately objected to portions of the Award including (1) the POI and a portion of the underlying rationale discussing arbitration awards involving Intrado from Ohio¹ ("Ohio Awards"), (2) rejection of dedicated trunk lines from Verizon end offices to the Intrado network, (3) rejection of reciprocal forecasting of traffic, (4) rejection of language regarding Automatic Location Information² ("ALI"), (5) clarification of a provision in the Award regarding tariffs, (6) an objection to a discussion of the arbitrator's jurisdiction and (7) an objection to language implying that Public Safety Answering Points ("PSAPs") are not end users. Intrado did not submit a detailed brief on the last three objections. Intrado alleged that the arbitrator acted arbitrarily by rejecting language Intrado proposed in the areas it contests and requested that the Commission incorporate its proposed language in the Agreement. See, Intrado Exceptions.

Verizon responded on December 1, 2008, opposing the Intrado objections. Verizon argued that the Commission can only reject the Award if it conflicts with the interconnection statutes or regulations issued thereunder. See, 47 U.S.C. §252(e)(2)(B). Verizon urged the Commission to summarily reject the Exceptions because Intrado failed to allege that the Award violated the statutory standard. Id. Verizon also contended that the Award falls within the terms of the interconnection statutes, responded to each objection individually and urged the Commission to uphold the arbitrator's decisions. See, Verizon Response to Exceptions.

¹Public Utilities Commission of Ohio Case No. 07-1216-TP-ARB, Petition of Intrado Communications, Inc. For Arbitration on Interconnection Rates, Terms and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996 (Sept. 24, 2008), and Case No. 08-537-TP-ARB, Petition of Intrado Communications, Inc. for arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company (Oct. 8, 2008).

²ALI is information associated with a telephone number used by PSAPs to assist in directing responders to a caller's location.

DISCUSSION

Verizon urged the Commission to summarily reject the Intrado arguments for rejecting portions of the Agreement under 47 U.S.C. §252(e)(2)(B) because Intrado did not allege that the Award failed to comply with the terms of the interconnection statutes or any regulation issued thereunder. Although, we agree that Intrado did not formally cite any error under the federal statute, the Commission nonetheless elects to consider the substance of the Intrado arguments.

The Commission will consider Issues 3 and 12³ together, Issues 6 and 14 separately, the requests to strike various passages from the Award together and finally the request for clarification.

POI and Dedicated Trunk Lines (Issues 3 and 12)

The foremost issue of disagreement is the location of the POI between the two networks (Issue 3). Location of the POI also substantially influences the proposal for direct trunking between Verizon end offices and the Intrado network (Issue 12). Intrado argues that provisions of 47 U.S.C. §251(c)(2) and 47 C.F.R. §51.305(a) fixing the POI on the Incumbent Local Exchange Carrier ("ILEC") (Verizon) network are superseded by a subsequent provision of the same statute and regulation mandating equal quality between service provided by the ILEC to itself and any party requesting interconnection. Intrado believes that the only possible means to provide equal quality service between itself and Verizon is for Verizon to build out to a point on the Intrado network with direct trunk lines from each end office. Intrado also argues that the Commission can place the POI on its network based on a public policy need for reliable emergency communications. See, Exceptions at 6-15.

The arbitrator rejected the Intrado argument based on the clear language of the statute and regulation requiring the POI to be on the Verizon network. The explicit mandate locating the POI cannot be avoided by a novel reading of the technical quality standards as Intrado suggested. In fact, a close reading of 47 C.F.R. §51.305(a)(3) supports the arbitrator's interpretation that the equal quality mandate refers to technical standards and not to location of the POI. The Commission finds that the arbitrator followed the law and directed that the POI be on the Verizon network. As a logical corollary to that finding, the arbitrator properly determined that Verizon may organize its call delivery to the POI as it sees fit and properly rejected the Intrado demand for dedicated trunk lines from every end office to the Intrado network. See, Award at 12-15, 20.

Reciprocal Forecasting (Issue 6)

Intrado alleges that the arbitrator improperly rejected its proposed language for mutual traffic forecasting between the parties in Section 1.6.2 of the 911 Attachment to the Agreement. Intrado believes that forecasting data from Verizon is necessary to anticipate how many calls will originate on the Verizon network and terminate on the Intrado network. See, Exceptions at 16-17. The

³The Commission will use the numbering contained in the Disputed Issues Matrix submitted by the parties and used in the Award for clarity. See, Intrado Hearing Exhibit 4.

arbitrator found that potential PSAP customers were in an equal or superior position to inform Intrado of expected call volume and therefore sided with Verizon on this matter. The arbitrator also noted that Section 1.5.5 of the 911 Attachment separately allows Intrado to meet with Verizon and discuss traffic flow if needed. See, Award at 18-19. Verizon essentially concurs in the arbitrator's reasoning. See, Verizon Response.

The Commission believes that the need for trunk lines between Intrado and the Verizon network will be directly proportional to the success Intrado has selling services to PSAPs in the marketplace. Those PSAP customers will be known to and will have a business relationship with Intrado, but not with Verizon. Thus, Intrado will be better positioned than Verizon to compile the data Intrado seeks. Therefore, the Commission finds that the arbitrator's decision was sound and declines to compel Verizon to provide forecasts. Further, the Commission will not reject any portion of the Award regarding Section 1.6.2 of the 911 Attachment.

ALI Tables (Issue 14)

Intrado disputes the arbitrator's adoption of language that Verizon proposed regarding Verizon providing data for ALI steering tables in Section 1.2 of the 911 Attachment. The adopted language requires the parties to cooperate when Intrado manages an ALI database "for inclusion of Verizon End User data in the ALI database." See, Award at 21. Intrado argued before the arbitrator that its language is needed to create interoperability between competing 911 systems and that the Verizon language is insufficient to protect wireless and VoIP callers who are transferred from a PSAP served by Verizon to one served by Intrado. See, Intrado Initial Brief at 36-38. Intrado now adds that its language would require storage of pseudo Automatic Numbering Identification⁴ ("pANI") to accommodate a call transfer between PSAPs served by the competing parties. See, Exceptions at 18-20. Verizon argues that it is not obligated to provide the information Intrado seeks here and objects to any possibility of the Agreement requiring it to work to maintain an Intrado database. See, Verizon Response at 28-30.

The Commission finds that the arbitrator's decision strikes the correct balance between the interests of Verizon and public safety. Verizon correctly argues that Agreement should not impose a potential requirement on it to maintain an Intrado database or require it to provide Intrado with information beyond Verizon customers. Therefore, the Intrado language regarding ALI steering tables should be rejected.

Request to strike portions of the Award

Intrado requested that the Commission strike three passages from the Award including (1) a portion of the analysis of Issue 3 where the arbitrator analyzed the relevance of the Ohio Awards, (2) the arbitrator's discussion of Commission jurisdiction for making the Award and (3) the characterization on page nine of the Award that PSAPs are not end users. See, Exceptions at 3, 5-6.

⁴pANI is a number used in wireless E-911 to properly route an emergency call. See, Newton's Telecom Dictionary.

The Commission disagrees with the request to strike the arbitrator's discussion of the Ohio Awards. The arbitrator correctly discussed the Ohio Awards because Intrado raised them in support of its position. See, Intrado Initial Brief at 9, 20. The Commission agrees that the discussion of those matters is only persuasive authority (or dicta as Intrado described it).

The Commission also declines to remove the arbitrator's discussion of Commission jurisdiction to hear this matter. The arbitrator correctly cites the circumstances surrounding this arbitration, including a pending matter before the Federal Communications Commission challenging the applicability of arbitration to the type of service Intrado proposes. See, Award at 10-11. The Commission believes that the arbitrator's discussion properly explained her ability to hear the matter and would prove helpful to any subsequent review.

Finally, the Commission rejects the objection from Intrado to a statement on page nine of the Award distinguishing PSAPs from end users. Once read in context, the arbitrator clearly meant that the Intrado business plan only includes service to PSAPs and not to residential or commercial customers.

Thus, the Commission finds that the passages cited by Intrado had no substantive effect on the Award and rejects the request to remove them.

Request for Clarification on Issues 34 and 35

Intrado also seeks clarification regarding the applicability of state tariffs to an interconnection agreement if the tariff was developed outside the interconnection process. See, Exceptions at 4-5. The Commission notes that Intrado did not substantially brief this issue nor specifically refer to a charge that it believes is inappropriately priced by an existing Verizon tariff. Intrado also does not allege that any existing Verizon tariff charge fails to comply with the pricing standards contained in 47 U.S.C. §252(d). Id. In the Award, the arbitrator rejected the Intrado position that existing tariffs are not an appropriate guide for interconnection charges, adopted the application of existing Verizon tariffs and directed Verizon to specify exactly what tariff applied to a particular service. See, Award at 24. The Commission believes that the Award satisfied the open issues presented to the arbitrator and declines to amend her ruling.

Conclusion

Thus, the Commission rejects the Exceptions to the Award and approves the Agreement pursuant to 47 U.S.C. §252(e) because the Award is consistent with the interconnection statutes and regulations issued thereunder.

FINDINGS OF FACT

1. Intrado filed a Petition for compulsory arbitration of open issues relating to negotiation of an interconnection agreement with Verizon. See, Petition for Arbitration.
2. The Commission reconsidered its initial dismissal of the matter and appointed an arbitrator. See, August 12, 2008 Commission Order.
3. The arbitrator issued an Award on seventeen contested open issues. See, Award.
4. Verizon and Intrado filed a complete text of the Agreement reflecting the decisions contained in the Award. See, Agreement.
5. Intrado objects to portions of the Award including the arbitrator's rulings on Issues 3, 6, 12 and 14; requests that the Commission strike portions of the discussion within the Award; and seeks a clarification regarding Issues 34 and 35. See, November 21, 2008 Exceptions.

CONCLUSIONS OF LAW

1. The Commission shall reject the agreement, or any portion thereof, if the Award does not meet the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) or regulations promulgated thereunder. See, 47 U.S.C. §252(e).
2. The POI between Verizon and Intrado shall be at a point on the Verizon network. See, 47 U.S.C. §251(c) and 47 C.F.R. §51.305.
3. Locating the POI on the Verizon network obviates the need for dedicated trunk lines between Verizon end offices and the Intrado network. See, Award at 20.
4. The language adopted by the arbitrator regarding reciprocal traffic forecasting is reasonable because Verizon is not in the best position to anticipate trunk line needs for the POI with Intrado.
5. The language adopted by the arbitrator regarding ALI steering tables is reasonable because it provides for public safety without imposing burdens on Verizon beyond data regarding its end users.
6. Discussions of Commission jurisdiction to hear this matter, the Ohio Award or what constitutes an end user had no substantive effect on the Award. See, Award.
7. The Award decided all open issues presented to the arbitrator regarding pricing. Id.

8. The Award complies with the requirements of 47 U.S.C. §251, 47 U.S.C. §252(d) and the regulations promulgated thereunder.

ORDER

IT IS THEREFORE ORDERED that the Exceptions to the November 14, 2008 Award are rejected and the November 21, 2008 Interconnection Agreement filed by Verizon and Intrado is approved.

IT IS FURTHER ORDERED that on entry of this Order, this case shall be removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order on all parties of record by United States First Class Mail and on Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

MJM/lcw
080298cg.wpd



WEST VIRGINIA ENHANCED 9-1-1 COUNCIL, INC.

420 BUCKHANNON PIKE
NUTTER FORT, WEST VIRGINIA 26301-4343
PHONE: (304) 623-6558



November 7, 2008

Ms. Sandra Squire, Executive Secretary
WV Public Service Commission
PO Box 812
Charleston, WV 25323

RE Case 08-0298-T-PC Intrado Communications, Inc and Verizon West Virginia, Inc

Dear Ms Squire,

The WV Enhanced 9-1-1 Council has been informed of the above case and has discussed this at a recent meeting. The members understand that Intrado has expressed a desire in this case to perform 9-1-1 call delivery using line call attribution. The 9-1-1 Council is concerned about the reliability and effectiveness of this method of emergency call delivery.

The Council has no desire nor intention to limit competition among the companies or to limit the free market in providing a more efficient or less costly product.

Please include our concerns with this method of emergency 9-1-1 call delivery.

Sincerely yours

Robert Hoge, Secretary
WV Enhanced 9-1-1 Council

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WVA PUBLIC SERVICE
COMMISSION
SECRETARY'S OFFICE

DOCKET NO. 36185

IN THE MATTER OF THE PETITION OF § PUBLIC UTILITY COMMISSION
INTRADO, INC. FOR ARBITRATION §
PURSUANT TO SECTION 252(b) OF THE §
COMMUNICATIONS ACT OF 1934, AS § OF TEXAS
AMENDED, TO ESTABLISH AN §
INTERCONNECTION AGREEMENT §
WITH GTE SOUTHWEST D/B/A §
VERIZON SOUTHWEST §

FILED
OCT 17 PM 4:23
FILING CLERK

**UNOPPOSED JOINT MOTION OF THE TEXAS COMMISSION ON STATE
EMERGENCY COMMUNICATIONS, THE TEXAS 9-1-1 ALLIANCE, AND THE
MUNICIPAL EMERGENCY COMMUNICATION DISTRICTS ASSOCIATION
FOR LEAVE TO FILE A STATEMENT OF POSITION**

The Texas Commission on State Emergency Communications,¹ and the Texas 9-1-1 Alliance,² and the Municipal Emergency Communication Districts Association (collectively referred to herein as the "Texas 9-1-1 Agencies") jointly submit this motion for leave to file a statement of position in the above-referenced arbitration docket pursuant to Public Utility Commission of Texas ("PUC") Interconnection Rules 21.11(b), 21.41 and 21.95(d). The Texas 9-1-1 Agencies would respectfully show:

P.U.C. Interconnection R. 21.95(d) provides that only parties to the negotiation may participate as parties in the arbitration hearing. The rule further provides that the "presiding officer may allow interested persons to file a statement of position to be considered in the proceeding." The Texas 9-1-1 Agencies should be granted leave to file a position statement with respect to the 9-1-1 emergency service issues raised in this docket. Such a position statement would benefit the Arbitrators, the Parties, the public interest, and public safety by providing the perspective of otherwise disinterested entities who are charged with providing 9-1-1 service in Texas. By this joint motion, the Texas 9-1-1 Agencies seek only to ensure that public safety

¹ The Texas Commission on State Emergency Communications is a state agency created pursuant to Texas Health and Safety Code Chapter 771, and is the State of Texas' authority via statute for 9-1-1 emergency communications.

² The Texas 9-1-1 Alliance is an interlocal cooperation act entity composed of Texas Emergency Communication Districts with E9-1-1 service public safety responsibility for approximately 53% of the population of Texas. The foregoing Emergency Communications Districts were created pursuant to Texas Health and Safety Code Chapter 772.

interests are not compromised via either a negotiated or arbitrated interconnection agreement between the Parties.

In addition P.U.C. INTERCONNECTION R. 21.11(b) provides that except where prohibited by statute, "the presiding officer or the commission may grant exceptions to any requirements ... for good cause." Rule 21.1(b) also provides that the arbitration award procedures cannot diminish or alter the rights of any person and that a substantive rule of the Commission controls over any arbitration award. Accordingly, it would not serve the interests of the Parties, the Arbitrators, the PUC, public safety, or the public interest for the 9-1-1 emergency services issues to be raised by the Texas 9-1-1 Agencies after conclusion of the arbitration proceeding.

The PUC has several rules that address aspects of 9-1-1 emergency services. (Cf., P.U.C. SUBST. R. 26.272, 26.433, and 26.435.) The Commission, for example, has previously adopted a declaratory order dealing with competitive 9-1-1 selective router services³ and P.U.C. SUBST. R. 26.433 specifies that the 9-1-1 authority shall designate the appropriate certificated telecommunications utility (CTU) for selective routing.⁴ Therefore, to the extent that a CTU were to seek to bypass or change such substantive requirements or route 9-1-1 call traffic through their own 9-1-1 selective router based merely on an arbitration award decision, then such

³ *Petition of the Advisory Commission on State Emergency Communications for Declaratory Rulings Against GTE Southwest, Inc.*, Docket No. 17972, Consolidated Order at 3 (Feb. 6, 1998). The Declaratory Order provides, in relevant part:

In accordance with these findings of fact and conclusions of law, and consistent with the stipulation of the parties, the Commission issues the following declaratory rulings:

1. PURA, GTE's 9-1-1 tariffs, and P.U.C. SUBST. R. 23.97(e)(1)(B) do not require that a 9-1-1 entity choose GTE as the appropriate CTU to provide facilities-based E9-1-1 tandem and/or database services.
2. Pursuant to the Texas Health and Safety Code and GTE's 9-1-1 tariffs, "selective routing" is a feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the PSAP serving the place from which the call originates.
3. PURA, GTE's 9-1-1 tariffs, and P.U.C. SUBST. R. 23.97(e)(1)(B)(i)(IV) do not authorize GTE to require a 9-1-1 customer to take and to pay for unnecessary 9-1-1 trunks and for unwanted and unneeded routing service from an end office to an E9-1-1 tandem.
The Commission further orders that:
4. GTE, within 45 days of a future written request by Panhandle RPC, shall comply with the request and route its end office to the SWBT E9-1-1 tandem in Amarillo. Additional implementation time may be afforded only by the joint written agreement of ACSEC and Commission Staff.

⁴ P.U.C. SUBST. R. 26.433(b)(5) provides: "9-1-1 network services provider – The CTU designated by the 9-1-1 administrative entity to provide 9-1-1 network services." PUC Subst. R. 26.433(b)(3) provides: "9-1-1 network services – Services purchased by the 9-1-1 administrative entity(ies) that routes 9-1-1 calls from a 9-1-1 tandem or its equivalent to a public safety answering point(s)."

would be contrary to law, the public interest, public safety, and be null and void as a matter of law.

Similarly, P.U.C. SUBST. R. 26.435(c)(4) makes clear that the 9-1-1 authority(ies) shall establish the specifications for the rate center.⁵ Therefore, to the extent that an arbitration award would grant Intrado's request that Verizon deploy "line attribute routing"⁶ in a split rate center, then such would be contrary to law, the public interest, public safety, and be null and void as a matter of law. Both line attribute routing and unnecessary 9-1-1 selective routing bypass (as may be urged by Verizon) are unacceptable and inconsistent with applicable laws, orders, rules, and requirements. The above examples are just two of the potential 9-1-1 emergency service issues of significance for which a statement of position by the Texas 9-1-1 Agencies is needed and appropriate and for which there is good cause to grant leave to file such a statement.

The Texas 9-1-1 Agencies are authorized to represent that Intrado and Verizon will not oppose this motion.

WHEREFORE, the Texas 9-1-1 Agencies request that this motion be granted, that they be permitted to file a statement of position as needed and appropriate in this arbitration, and for such other further relief to which they are justly entitled in order to promote and protect the public interest.

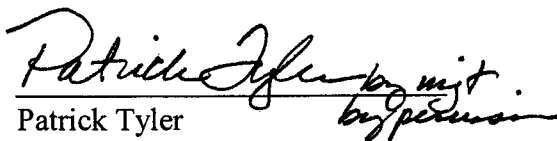
Date: October 17, 2008

⁵ P.U.C. SUBST. R. 26.435(c)(4) provides: "Service arrangement – Each particular arrangement for 9-1-1 emergency services specified by the 9-1-1 entity for the relevant rate center(s) within its jurisdiction."

⁶ *In the Matter of the Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Incorporated d/b/a Verizon Southwest*, Docket No. 36185, Petition for Arbitration at 21 (Sept. 24, 2008) ("Intrado Petition").

Respectfully submitted,

TEXAS COMMISSION ON STATE EMERGENCY
COMMUNICATIONS


Patrick Tyler

General Counsel

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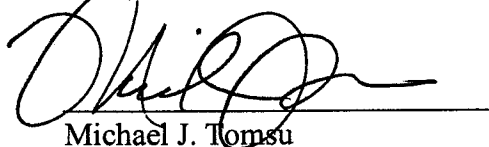
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VINSON & ELKINS L.L.P.



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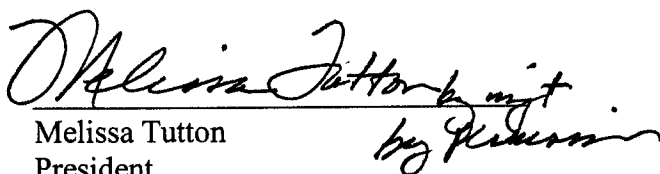
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ATTORNEYS FOR THE TEXAS 9-1-1 ALLIANCE


Melissa Tutton

President

MUNICIPAL EMERGENCY COMMUNICATION
DISTRICTS ASSOCIATION

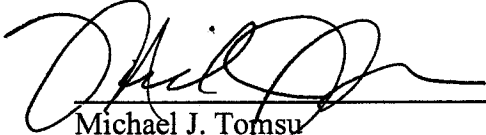
On the Filing:

Richard A. Muscat

Bexar Metro 9-1-1 Network District

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on all parties of record via regular mail, postage prepaid, hand-delivery, or facsimile on this 17th day of October, 2008.



Michael J. Tomsu